

Indiana Brownfields Program (IBP)

Implementation of the All Appropriate Inquiry (AAI) Rule

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Indiana Brownfields Program



IBP Implementation of AAI

- Indiana Brownfields Program (IBP) will utilize the federal rule
 - After November 1, 2006, parties must comply with the requirements of the federal All Appropriate Inquiries Final Rule, or follow the standards set forth in the ASTM E1527-05 Phase I Environmental Site Assessment Process, to satisfy the statutory requirements for conducting all appropriate inquiries
 - No state distinctions at this time
 - No current understanding with EPA that demonstrating compliance with AAI to the state will similarly satisfy EPA



IBP Implementation of AAI

- Indiana Brownfields Program (IBP) applicability:
 - Grant/loan eligibility
 - Comfort and site status letter eligibility
 - Comfort letter based on landowner liability exemption
 - Site status letter
 - Comfort letter based on contaminated aquifer nonrule policy document
 - Continuing obligations (reasonable steps) to satisfy AAI



IBP Implementation of AAI

- Grant/loan Eligibility:
 - State-funded Phase I
 - State-funded Phase II
 - Remediation Grants
 - Low Interest Loans



IBP Implementation of AAI - Grant/loan Eligibility

- Phase I site characterization or assessment conducted with use of IBP funds (site assessment grant or loan) after November 1, 2006 must comply with AAI rule/ASTM E1527-05
 - Until then, will fund ASTM E1527-00 or E1527-05 Phase I
 - Keep in mind how you intend to use the report; may require updates later for other uses (i.e., liability exemption) so might want to conduct AAI rule-compliant Phase I now



IBP Implementation of AAI - Grant/loan Eligibility

- An AAI rule-compliant Phase I must be submitted before IBP will fund a Phase II investigation using site assessment grant funds after November 1, 2006
 - Phase I conducted prior to November 1, 2005: no need to comply with AAI for purposes of funding application
 - Phase I conducted between November 1, 2005 and November 1, 2006: IBP will require update to comply with AAI rule/ASTM E1527-05



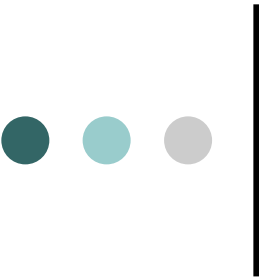
IBP Implementation of AAI - Grant/loan Eligibility

- An AAI rule-compliant Phase I must be submitted before a remediation grant (petroleum or hazardous substance) will be awarded or a low interest loan approved after November 1, 2006
 - Phase I conducted prior to November 1, 2005: no need to comply with AAI for purposes of funding application
 - Phase I conducted between November 1, 2005 and November 1, 2006: IBP will require update to comply with AAI rule/ASTM E1527-05



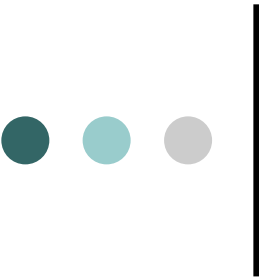
IBP Implementation of AAI

- Comfort and site status letter eligibility:
 - Landowner liability exemptions:
 - Indiana incorporated the bona fide prospective purchaser (BFPP) and contiguous property owner (CPO) liability exemptions into statute in IC 13-25-4-8(b)



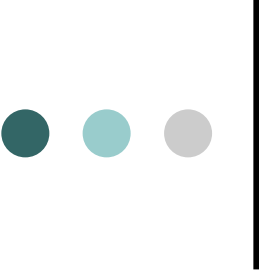
IBP Implementation of AAI - Comfort and site status letter eligibility

- Comfort letter based on landowner liability exemption (BFPP, CPO or innocent landowner) requires an AAI rule-compliant Phase I if make request after November 1, 2006
 - If make request before November 1, 2006, will accept ASTM E1527-00 or E1527-05
 - This will be true if a party seeks a landowner liability exemption determination from another IDEM program as well (i.e., state cleanup)



IBP Implementation of AAI - Comfort and site status letter eligibility

- Site status letter (SSL):
 - Requires an AAI rule-compliant Phase I after November 1, 2006 in order to effectively evaluate site conditions and conduct risk-based evaluation of property use restrictions required, if any
 - Phase I conducted prior to November 1, 2005: no need to comply with AAI for purposes of SSL request
 - Phase I conducted between November 1, 2005 and November 1, 2006: IBP will require update to comply with AAI rule/ASTM E1527-05
 - *Possible exceptions*: e.g., obvious from historic usage of site no risk presented



IBP Implementation of AAI - Comfort and site status letter eligibility

- Comfort letter based on contaminated aquifer nonrule policy document
 - *Recommend* (not require) an AAI rule-compliant Phase I after November 1, 2006 in order to effectively evaluate site conditions and conduct risk-based evaluation of property use restrictions required, if any
 - This will be true if a party seeks a determination on applicability of the contaminated aquifers policy from another IDEM program as well (i.e., state cleanup)



IBP Implementation of AAI

- Continuing obligations/reasonable steps:
 - IBP will issue “comfort and comment” letters that outline IDEM’s technical opinion as to what constitutes “reasonable steps” at a site
 - Advisory only; ultimately burden of person claiming exemption to demonstrate undertaking reasonable steps



IBP Implementation of AAI

- Pending considerations:
 - Whether IBP will fund updates to Phase Is
 - 180 day issues or one-year shelf life
 - Whether IBP will require EPs conducting IBP Phase Is to certify attendance of an ASTM-sponsored training on E1527-05
 - Other states are requiring this



IBP Implementation of AAI

○ Questions? Contact:

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